

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

DAVID ALLEN VICKERS,  
Defendant.

No. 2:12-cr-02036-SAB

**ORDER DENYING  
DEFENDANT'S MOTION TO  
VACATE, SET ASIDE, OR  
REDUCE SENTENCE;  
GRANTING MOTION TO  
WITHDRAW**

On June 23, 2014, Defendant filed a Motion to Vacate, Set Aside, or Correct Sentence. ECF No. 44. A briefing schedule was set and on October 31, 2014, proceedings were stayed for ninety days or until the Ninth Circuit Court of Appeals issued a decision in *Ezell v. United States*, 14-71696. ECF No. 55. The Court of Appeals issued its decision in *Ezell* on January 23, 2015. This Court ordered parties to file a Status Certificate updating the Court on this matter, ECF No. 57, and Defendant did so on July 14, 2015. ECF No. 60. The Government filed a response concurring with the status certificate on July 22, 2015. ECF No. 61.

Defendant's motion to vacate, set aside or correct sentence was premised on the Supreme Court's decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013). At the time Defendant filed the pending motion, the Ninth Circuit Court of

**ORDER DENYING DEFENDANT'S MOTION TO VACATE, SET ASIDE,  
OR REDUCE SENTENCE; GRANTING MOTION TO WITHDRAW # 1**

1 Appeals was considering *Ezell*, which concerned whether *Descamps* applied  
2 retroactively. In *Ezell*, the Ninth Circuit ruled that *Descamps* does not apply  
3 retroactively. Defendant concedes the *Ezell* ruling, as well as other related case  
4 law, forecloses relief in this matter as it renders his motion untimely. The Court  
5 concurs. Accordingly, the Court denies Defendant's motion.

6 Defense Counsel moves to withdraw from this matter. Because there are no  
7 remaining pending issues, the Court grants counsel's request, and closes this file.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Defendant's Motion to Vacate, Set Aside, or Correct Sentence, ECF No.  
10 44, is **DENIED**.

11 2. Defense Counsel's Motion to Withdraw, included in ECF No. 60, is  
12 **GRANTED**.

13 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
14 file this Order, provide copies to counsel and **close the file**.

15 **DATED** this 3<sup>rd</sup> day of September 2015.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

21 Stanley A. Bastian  
22 United States District Judge  
23  
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**ORDER DENYING DEFENDANT'S MOTION TO VACATE, SET ASIDE,  
OR REDUCE SENTENCE; GRANTING MOTION TO WITHDRAW # 2**